

SERVED: February 26, 2008

NTSB Order No. EA-5367

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 25th day of February, 2008

_____)	
Petition of)	
)	
BRYAN W. HILTON)	
)	
for review of the denial by)	Docket SM-4813
the Administrator of the)	
Federal Aviation Administration)	
of the issuance of an airman)	
medical certificate.)	
)	
_____)	

OPINION AND ORDER

Petitioner, proceeding pro se, appeals the oral initial decision and order of Chief Administrative Law Judge William E. Fowler, Jr., issued in this proceeding on October 30, 2007.¹ By that decision, the law judge denied petitioner's appeal of the Administrator's denial of his application for a medical certificate. We affirm the law judge's order.

¹ A copy of the initial decision, an excerpt from the hearing transcript, is attached.

The Federal Air Surgeon denied petitioner's application for first-class airman medical certification based on an established medical history of bipolar disorder (Exh. A-1 at 18), which condition specifically renders an applicant ineligible for an airman medical certificate under 14 C.F.R. §§ 67.107(a)(3), 67.207(a)(3), and 67.307(a)(3).² Petitioner's appeal challenges the law judge's decision based, primarily, on an alleged invalid diagnosis of bipolar disorder.

Petitioner's airman medical file, dating from February 9, 1999, includes evidence of then 17-year-old petitioner's voluntary admission to a psychiatric hospital on that date (Exh. A-1 at 61); a diagnosis of bipolar disorder; and, then, more recently, evaluations which reflect asymptomatic behavior but do not reject the previous diagnosis of bipolar disorder. The evidence indicates that petitioner took psychiatric medication for about 6 months, but had not taken such medication for over 6 years. Exh. A-1 at 20.

Petitioner argues that the psychiatrist who diagnosed him with bipolar disorder "did not follow the specific criteria" set forth by the DSM-IV,³ and that the diagnosis is, therefore, "not

² Under §§ 67.107, 67.207, and 67.307, respectively, bipolar disorder is a disqualifying condition for first-class, second-class, and third-class airman medical certificates.

³ American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition. Washington, DC,

valid." Petitioner, citing the DSM-IV, contends that:

The essential feature of Bipolar II disorder is a clinical course that is characterized by the occurrence of one or more major depressive episodes (Criterion A) accompanied by at least one hypomanic episode (Criterion B).

Further citing the DSM-IV, petitioner states that:

A hypomanic episode is defined as a distinct period during which there is an abnormally and persistently elevated, expansive, or irritable mood that lasts at least 4 days (Criterion A).

Petitioner does not contest that he has had "one or more major depressive episodes," but does contest that he has had "[a] hypomanic episode ... that lasts at least 4 days." He argues that his hospital stay in 1999 was only three days, "therefore preventing the exposure required for a medical professional to observe any such behaviors for [the specified four days]."

Petitioner argues that the FAA's expert medical witness, a practicing psychiatrist, admitted that, "strict compliance with the criteria set forth by the DSM-IV-TR is essential for a correct diagnosis." Our review of this testimony, however, shows that the witness responded in the affirmative to respondent's asking if it was "important to follow the guidelines of the DSM in classifying illnesses." Tr. at 66. She testified also, however, that there "is more to a

(..continued)
American Psychiatric Association, 1994.

psychiatric diagnosis than just looking at the DSM-IV.”⁴ Id. She indicated, based upon her review of petitioner’s airman medical record, her concurrence with the bipolar diagnosis (Tr. at 65) and with the Federal Air Surgeon’s denial of an airman medical certificate (Tr. at 65, 80).⁵

Petitioner also argues that the law judge’s decision is in “conflict” with Board precedent. He cites a case in which a diagnosis was rejected by the FAA’s chief psychiatrist, partly because the “diagnosis had been reached by a physician who had interviewed the petitioner for only one hour.”⁶ Petitioner notes that the duration of his own “diagnosing interview” was less than an hour. The cited case does not provide meaningful precedent for our decision in this case. Although the psychiatrist in Witter mentioned the duration of the interview, he also indicated “petitioner did not meet the criteria for such a diagnosis.” Id.

We have previously held that a petitioner was ineligible for a medical certificate because of his history of psychosis,

⁴ We also note that, while the criteria for diagnosis of a manic episode includes a specific time period, the DSM-IV indicates parenthetically that the requisite period may be of any duration “if hospitalization is necessary.”

⁵ Interestingly, we note that the DSM-IV also states that individuals often “do not recall periods of hypomania without reminders from close friends or relatives.”

⁶ Petition of Witter, NTSB Order No. EA-4500 at n.6 (1996).

and that he did not "produce competent medical evidence in support of his position that he is qualified for medical certification."⁷ We have also held that, notwithstanding a petitioner's current absence of any symptoms, a single psychiatric episode in a hospital, which occurred years before the Administrator's denial of a medical certificate, rendered that petitioner ineligible for medical certification.⁸

While petitioner apparently does not currently exhibit symptoms of bipolar disorder, we find that petitioner's original diagnosis, and the evidence of symptoms of bipolar disorder, a specifically disqualifying condition, outweigh the absence of symptoms at the current time. The psychiatrist testified in the instant case that, in an individual who has bipolar disorder, fluctuation between the two extremes of mood can sometimes be "dispersed by periods of no symptoms whatsoever for any length of time." Tr. at 17. Petitioner's most recent evaluation, although noting the absence of current symptoms, indicates concern for a relapse. Exh. A-1 at 48. The psychiatrist testified that this was a concern. Tr. at 63-64.

We do not find that the absence of any current symptoms of bipolar disorder is persuasive enough to satisfy petitioner's

⁷ Petition of Rasmussen, NTSB Order No. EA-5059 at 2 (2003).

⁸ Petition of Arechavala, 3 NTSB 3060, 3061, 3063-64 (1980).

burden of proving that he is eligible for a medical certificate.⁹ We have previously stated that, regardless of a petitioner's current condition, "a psychotic episode or psychosis" is sufficient to deny a petitioner's application for a medical certificate.¹⁰ The same applies to the diagnosis of a bipolar disorder. Likewise, our holding in Arechavala¹¹ compels a finding of disqualification here. Although the petitioner in that case did not have symptoms when the Administrator denied her application for a medical certificate, she previously had an "acute psychotic episode," which we found sufficient for disqualification. Petitioner's argument that no clinical evidence of bipolar disorder exists because no one observed him long enough to establish that a manic episode lasted longer than 3 days is not persuasive. The applicable regulations do not require observation of a petitioner while he experiences such symptoms; instead, the regulations require petitioners to have "no established medical history or clinical diagnosis" of bipolar disorder.¹²

⁹ Our Rules of Practice provide that, in proceedings under 49 U.S.C. § 44703, the burden of proof is on the petitioner. See 49 C.F.R. § 821.25.

¹⁰ Administrator v. Bohnen, 1 NTSB 1882, 1883 n.8 (1972).

¹¹ Supra at 3061-62.

¹² See 14 C.F.R. §§ 67.107(a)(3), 67.207(a)(3), and 67.307(a)(3); see also Petition of Lenser, NTSB Order No. EA-5234 at 7 (2006).

We find the evidence in the medical records, and the testimony of the FAA's expert witness, sufficient to render a conclusion that petitioner was correctly diagnosed with bipolar disorder and to disqualify petitioner for a medical certificate.

In conclusion, petitioner has not met his burden of proving that he is eligible for a medical certificate. As such, we affirm the law judge's initial decision.

ACCORDINGLY, IT IS ORDERED THAT:

1. Petitioner's appeal is denied; and
2. The law judge's initial decision, denying petitioner's appeal of the Administrator's denial of his medical certificate, is affirmed.

ROSENKER, Chairman, SUMWALT, Vice Chairman, and HERSMAN, HIGGINS, and CHEALANDER, Members of the Board, concurred in the above opinion and order.

UNITED STATES OF AMERICA
 NATIONAL TRANSPORTATION SAFETY BOARD
 OFFICE OF ADMINISTRATIVE LAW JUDGES

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Petition of:

BRYAN W. HILTON

For the review of the denial by the
 Administrator of the Federal Aviation
 Administration of the issuance of an
 airman medical certificate.

Docket No.: SM-4813
 JUDGE FOWLER

* * * * *

U.S. Bankruptcy Court
 One Division Northwest
 Courtroom B, 3rd Floor
 Grand Rapids, Michigan 49503

Tuesday,
 October 30, 2007

The above-entitled matter came on for hearing, pursuant
 to Notice, at 10:00 a.m.

BEFORE: WILLIAM E. FOWLER, JR.,
 Chief Administrative Law Judge

APPEARANCES:

On behalf of the Administrator:

TIMOTHY TRAINOR
Federal Aviation Administration
800 Independence Avenue, Southwest
Washington D.C. 20591

On behalf of the Petitioner:

BRYAN W. HILTON, Pro se

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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE FOWLER: This has been a proceeding before the National Transportation Safety Board held pursuant to the provisions of the Federal Aviation Act of 1958 as that Act was subsequently amended, on the petition for review of Bryan W. Hilton who on March 27, 2007 the Federal Air Surgeon issued Petitioner Hilton a final denial of airman medical certification for a first class airman medical certificate because, because of the Petitioner's history of a bipolar II Disorder.

This matter came on for trial on October 30th, 2007. This proceeding has been heard before this United States Administrative Law Judge, and as is provided by the National Transportation Safety Board's Rules of Practice, specifically Section 821.42 of those rules, as the Judge in this proceeding, I'm going to proceed to issue an oral initial decision at this time.

Following notice to the parties, this matter came on for

1 trial on October 30th, 2007 in Grand Rapids, Michigan. The
2 Petitioner, Bryan W. Hilton, was present at all times and elected
3 to proceed on a pro se basis without counsel. The Administrator,
4 or oftenly addressed, as the Complainant in this proceeding, was
5 very ably represented by Timothy F. Trainor, Esquire, of the
6 General Counsel's office of the Federal Aviation Administration.
7 Both parties have been afforded the opportunity to offer evidence,
8 to call, examine, and cross-examine witnesses in behalf of their
9 case. In addition, the parties were afforded the opportunity to
10 make final argument in support of their respective positions.

11 I have reviewed the testimony and the documentary
12 exhibits adduced during the course of this proceeding. The
13 Administrator had three exhibits. Petitioner had one. I have
14 reviewed all of those, as well as the witnesses testimony. One
15 witness on behalf of the Administrator, and one witness on behalf
16 of the Petitioner, the Petitioner himself, Bryan W. Hilton,
17 Petitioner Hilton is faced with a formidable if not almost
18 insurmountable, obstacle here in this proceeding. That is the
19 Federal Air Surgeon has denied him a first class airman medical
20 certificate based on a clinical diagnosis and clinical history of
21 a bipolar II Disorder. Under the rules and regulations, as
22 promulgated by the Federal Aviation Administration, this is a
23 specifically disqualifying condition.

24 In addition to that, we have had the testimony of the
25 one witness on behalf of the Administrator, Dr. Elin Berg, a very

1 eminent, and board certified psychiatrist who testified in depth,
2 and at length, and voluminously, to say the least, on her
3 findings, conclusions, and ultimate determinations based on her
4 review of the Petitioner's medical records, as they are set forth
5 in the Administrator's Exhibit 1. Those are copious records and
6 Dr. Berg went through them very thoroughly and concurred quite
7 emphatically with the diagnosis made by Dr. Van Valkenburg in
8 1999, he who made a bipolar diagnosis, bipolar II diagnosis of
9 Petitioner Hilton. Not only did she agree, but she pointed out
10 that many of the symptoms and manifestations possessed or
11 demonstrated at a time were so bad and possessed by Petitioner
12 Hilton.

13 In addition to that, Dr. Berg was quite emphatic that
14 the length of a person who has been, who has a clinical history
15 and clinical diagnosis of bipolar II Disorder, the length of an
16 asymptomatic period of time really, where the FAA rules and
17 regulations are concerned, in effect is of no force and effect.

18 I have a great deal of empathy, to be very personal
19 about it, for you, Mr. Hilton. You're a young man. You're
20 aspiring to move on and progress in aviation and majoring in that
21 in your collegiate career, and being as young as you are, perhaps
22 the door isn't completely closed yet where your certification is
23 concerned. But as a Judge in this proceeding, I have to uphold
24 and be bound by the federal rules and regulations. Administrator's
25 Exhibit 1, which is your certified medical records, coupled with

1 records and documents that you yourself sent, indicate that there
2 is no question but that the Administrator was validly premised in
3 denying you medical certification for a first class airman medical
4 certificate. Extracts, portions of pages 58, 61, 80, and 96 of
5 Administrator's Exhibit A-1, the certified medical records of the
6 Petitioner Bryan W. Hilton, further emphasize and substantiate
7 that as I stated a moment ago, the Administrator was validly
8 premised, as was the Federal Air Surgeon in issuing a denial of
9 Petitioner's November 22nd, 2006 application for a first class
10 airman medical certificate.

11 The paramount, central, and overriding fact here is the
12 safety of the general public, and a bipolar II clinical history
13 and diagnosis as we have here by Dr. Van Valkenburg and the fact
14 Dr. Berg had no problem with that diagnosis; agreed with it fully.
15 So I am bound by the FAA rules and regulations. That being so, I
16 will now proceed to make the following specific findings of fact
17 and conclusions of law: based on my determinations of the review
18 of the totality of the evidence.

19 One, It is found on November 22nd, 2006, Petitioner
20 Hilton applied for a first class airman medical certificate and
21 was examined by a designated aviation medical examiner who
22 deferred issuing the certificate, pending further evaluation.

23 Two, it is found that by a letter dated March 27th,
24 2007, the Federal Air Surgeon issued Petitioner Hilton a final
25 denial of airman medical certification under 14 CFR 67.107(a)(3),

1 67.207(a)(3), and 67.307(a)(3) because of Petitioner Hilton's
2 history of a bipolar II Disorder.

3 Three, it is found that Petitioner's medical records
4 support the findings of the Federal Air Surgeon.

5 ORDER

6 It is ordered, adjudged, and decreed that the Petitioner
7 is disqualified from airman medical certification under 14 CFR
8 67.107(a)(3), 67.207(a)(3), and 67.307(a)(3) of the Federal
9 Aviation Regulations. This order is issued by William E. Fowler,
10 Jr., the United States Administrative Law Judge.

11

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13 EDITED & DATED ON

JUDGE

14 NOVEMBER 14, 2007

WILLIAM E. FOWLER, JR.